IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

UNITED STATES OF AMERICA,	)	
	)	
vs.	)	Case No. CR-03-BE-530-S
	)	
RICHARD M. SCRUSHY,	)	
	)	
Defendant.	)	

ENTERED

MAR 3 - 2004

ORDER

This cause is before the court on several motions filed by the defendant. The motions were referred to the undersigned by the district judge, and they have been fully briefed by the parties. The following orders are entered to resolve the motions.

1. Defendant's Motion to Strike Surplusage (Doc. 98) — Defendant seeks an order striking as surplusage four particular allegations in the indictment: (a) that the defendant owed a fiduciary duty to the stockholders and Board of Directors of HealthSouth due to his former position as chief executive officer of HealthSouth; (b) references to Securities and Exchange Commission regulations requiring corporations to accurately record and disclose financial information; (c) references to certain accounting principles and practices; and (d) allegations that defendant committed offenses in Jefferson County, Alabama, and "elsewhere." Defendant contends that the inclusion of these matters in the indictment are irrelevant and create the risk that the jury may confuse them with the elements of the actual offenses with which the defendant is charged. The Government has responded that the

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allegations are either contextual, giving a complete picture of the circumstances involved in the offenses, or relate directly to certain elements of the offenses themselves.

The standard for striking surplusage from an indictment is "exacting." The Eleventh Circuit Court of Appeals has noted:

> A motion to strike surplusage from an indictment should not be granted "unless it is clear that the allegations are not relevant to the charge and are inflammatory and prejudicial.... [T]his is a most 'exacting standard.'" United States v. Huppert, 917 F.2d 507, 511 (11th Cir. 1990) (quoting 1 Charles A. Wright, Federal Practice and Procedure § 127 at 424-29 (1982)).

United States v. Awan, 966 F.2d 1415, 1426 (11th Cir. 1992); see also United States v. Lockheed Corp., 1995 WL 17064093 (N.D.Ga. 1995). Earlier, the pre-split Fifth Circuit Court of Appeals likewise described the standard as follows:

> The inclusion of clearly unnecessary language in an indictment that could serve only to inflame the jury, confuse the issues, and blur the elements necessary for conviction under the separate counts involved surely can be prejudicial. See United States v. Bufalino, 285 F.2d 408 (2nd Cir. 1960), and United States v. Spock, 416 F.2d 165 (1st Cir. 1969). ... Although the path between overly cryptic brevity and prejudicial superfluity in all portions of the indictments may be narrow, the "plain, concise and definite written statement of the essential facts constituting the offense charged," required by Fed.R.Crim.P. 7(c), is the only legal way through the gate.
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> The appellate test is based upon a determination of whether the district judge abused his discretion in refusing to strike the objectionable language. To now hold that the refusal to strike should invalidate [defendant's] conviction, we would have to be convinced that the allegedly excessive language was irrelevant, inflammatory and prejudicial. It would unnecessarily prolong this opinion to recite the specific textural matter here. Suffice it to say, this standard, which is described as "exacting," was not met. See C. Wright, 1 Federal Practice and Procedure, § 127 p. 278.

United States v. Bullock, 451 F.2d 884, 888 (5th Cir. 1971).[1]

Applying this "exacting" standard to the indictment in this case, the court is not persuaded that the matters alleged to be surplusage are due to be stricken. References to defendant's position as chief executive officer of HealthSouth and his fiduciary duty to the shareholders and Board are not irrelevant and inflammatory. Rather, they state the basis for his duty to sign required certifications to the accuracy of the company's financial information, as well as his duty to provide honest service as an executive employee of the company. The same is true of references to SEC regulations, which placed a duty on the defendant to state accurately the financial position of the company. References to accounting principles and practices simply aid in the explanation of the mechanics of the scheme defendant is alleged to have masterminded. Finally, the allegation that defendant's conduct in relation to the alleged offenses may have occurred in Jefferson County and "elsewhere" states the unremarkable proposition that not all of the alleged conducted took place in Jefferson County. Certainly, none of these allegations is "inflammatory;" rather each is a straightforward assertion about the defendant and his role in the alleged scheme.

The motion to strike surplusage is due to be and hereby is DENIED.

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[1] In Bonner v. City of Pritchard, 661 F.2d 1206, 1209 (11th Cir. 1981)(*en banc*), the Eleventh Circuit adopted as binding precedent the decisions of the old Fifth Circuit Court of Appeals rendered before October 1, 1981.

2. Motion to Compel Compliance with Rule 16(a)(1)(E)(ii) (Doc. 99) — With this motion, the defendant seeks an order compelling the Government to *specify* the discovery documents it expects to use in it case-in-chief at trial. Here, the defendant does not argue that the Government has failed to produce discovery under Rule 16; rather, that the Government has produced so much discovery that defendant is handicapped in attempting to go through all of it unless the Government *identifies* and *specifies* the particular documents it intends to use in its case-in-chief. The Government has responded that the motion is a premature request for an exhibit list and that it has no Rule 16 obligation to *specify* the discovery documents it might use at trial. Nonetheless, the Government has gone on to provide at least a partial specification of the documents it considers relevant to the charges for trial.

The court agrees with the Government that the plain language of Rule 16(a)(1)(E)(ii) does not require the Government to *specify* from among the universe of discovery documents produced to defendant which of those documents it intends to rely upon at trial. Rule 16(a)(1)(E) describes three categories of documents the Government must turn over to the defendant during discovery: documents material to the defense, documents the Government intends to use in its "evidence in chief," and documents taken from or belonging to the defendant. So long as the Government fulfills its discovery obligation to produce all documents fitting into any one of these three categories, it cannot be put at hazard for failing to correctly *categorize* the documents it produces. Implicit in the defendant's position is the assertion that the Government must correctly label each document it produces in discovery, specifying whether it is one that the Government intends to use in its evidence in chief or

one the Government believes is material to the defense. The argument that the Government must identify and specify the discovery produced is meaningless, unless it is insisted that the specification be accurate, and if that is insisted, then there must be consequences for inaccuracy, intentional or not. The obligation imposed by Rule 16 is one of discovery, to make certain categories documents available to the defense. The rule does not impose a duty on the Government to tip its hand prematurely by requiring it to give the defendant a roadmap of its strategy. The act of categorizing documents under Rule 16 for the defendant necessarily reveals the Government's strategic view of the significance of each document—whether it is one pertinent to an anticipated defense or one the Government itself intends to use. The rule does not require that outcome. Although it requires an exchange of information, it does not open the door to discovery of strategy.

Insofar as the defendant contends that he is handicapped by the volume of discovery produced by the Government, the court of appeals recently offered cold comfort, stating in another case:

> The defendants complain that the Government's discovery was so voluminous that it hindered their pretrial preparation. The discovery was indeed voluminous – because the Government gave the defense access to far more information and materials than the law required. The defendants could hardly complain about that. If they had insufficient time to sort things out, they should have asked for a continuance.

United States v. Jordan, 316 F.3d 1215, 1253 (11th Cir. 2003). The motion is due to be and hereby is DENIED.

3. Motion for Disclosure of Grand Jury Information (Doc. 100) — In this motion, the defendant seeks an order compelling production of information relating to the Government's procedures for assuring that none of the grand jurors who returned this indictment was biased by any direct or indirect association with HealthSouth and its financial woes. Defendant points out that HealthSouth is a large, multi-national corporation headquartered in Birmingham and that it is likely that some of the grand jurors who voted to return this indictment may have had direct or indirect (i.e., through family or friends) connections to HealthSouth. The defendant wants to review the procedures, if any, the Government used to screen grand jurors for this potential bias. In response to the motion, the Government offered to make material portions of the grand jury transcript available for *in camera* review, an offer the defendant accepted in his reply brief.[2]

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[2] Although the parties are apparently in agreement that the court review the grand jury transcripts in this case for potential bias, the court has serious concerns about this procedure. The fact that HealthSouth is a large corporation and employer in this district seems a dreadfully weak ground for undertaking a review of the Government's grand jury procedures. Although the potential for bias certainly exists, that potential exists in many cases indicted by the grand jury. There are several large, multi-state banks headquartered in this district, each of which employs thousands of people in Birmingham. Must the court undertake such a review for potential bias each time one of these banks is robbed or victimized by fraud or embezzlement? If so, the court would have to review the procedures involved in the return of many, many indictments. Because of this concern, this order must not be taken as establishing the right of a defendant to conduct such a bias review over the objection of the Government. Something more than a generalized suspicion of bias must be shown before

The Government, therefore, is DIRECTED to submit to the undersigned, *ex parte* and under seal, those portions of the transcript of grand jury proceedings in this case that it contends evidence any steps taken by the Government to screen out and assure that no grand jurors with a potential for bias arising from an association with HealthSouth, directly or through family or friends, considered or voted on this indictment. Such transcript excerpts are to be filed, under seal, with the Clerk within fifteen (15) days after the entry of this Order.

4. Motion Pursuant to Rule 32.2 for Jury to Determine Forfeiture Nexus (Doc. 101) This motion seeks to establish that the question of a nexus between the property sought to be forfeited and any illegal activity warranting forfeiture be determined by the jury. The Government agrees the jury must make the determination. Consequently, the motion is due to be and hereby is GRANTED.

5. Motion for Hearing on Suppression of Recorded Conversations (Doc. 102) — This motion seeks a hearing at which the court may explore the circumstances surrounding the Government's efforts to obtain surreptitious tape recordings of statements made by the

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the veil of grand jury secrecy is pulled back. In order to gain access to secret grand jury proceedings, the defendant must show a "compelling need" based upon a particularized showing to establish the need for information under the circumstances of the case. See United States v. Aisenberg, ___ F.3d ___, 2004 WL 225538 (11th Cir., Feb 06, 2004). The court does not believe that the mere allegation that HealthSouth is a large employer in this district is a sufficiently particularized and compelling need to overcome the secrecy of grand jury proceedings.

defendant during conversations with William Owens, who was then cooperating with the Government's investigation of the defendant. Defendant argues that the secret tape recordings of him occurred while he was represented by counsel and, thus, were made in violation of Rule 4.2 of the Alabama Rules of Professional Responsibility.[3] Consequently, he asserts that the tape recordings must be suppressed in this case as a sanction for the misconduct of the federal attorneys who directed Owens' tape-recording efforts. Without attempting to decide whether the federal attorneys involved violated Rule 4.2, the court is persuaded that the tapes are not suppressible in any event and, therefore, a hearing on the matter is unnecessary.

At the outset, the court assumes without deciding that federal attorneys leading the investigation of Mr. Scrushy made the decision to "wire" Mr. Owens and send him to the defendant in an effort to obtain incriminating statements at a time when Mr. Scrushy was represented by counsel with respect to an ongoing investigation of him by the Securities and Exchange Commission. The court is willing to assume that the attorneys were subject to Rule 4.2, by virtue of 28 U.S.C. § 530B(a). The court even is willing to assume that a certain degree of overlap existed between the SEC's investigation and that being conducted by the Justice Department so that it is at least arguable that the effort to communicate with the defendant was on the same matter as that in which he was represented. But even assuming

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[3] Alabama Rule of Professional Responsibility 4.2 states, "In representing a client, a lawyer shall not communicate about the subject of the representation with a party the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer or is authorized by law to do so."

all of this and even assuming that it is possible that the conduct of the federal attorneys violated Rule 4.2, the decision of the Eleventh Circuit of Appeals in United States v. Lowery, 166 F.3d 1119 (11th Cir. 1999), *rehearing and rehearing en banc denied*, 180 F.3d 276 (11th Cir.), *cert. denied*, 528 U.S. 889, 120 S. Ct. 212, 145 L. Ed. 2d 178 (1999), makes plain that such violations of state rules of professional responsibility do not warrant the suppression or exclusion of admissible evidence in a federal proceeding. See also United States v. Parker, 165 F.Supp.2d 431, 477 (W.D.N.Y. 2001).

In Lowery the court of appeals dealt with the question whether testimony obtained on the basis of a plea agreement that arguably violated a Florida rule of professional responsibility was due to be suppressed because of the alleged violation of the ethics rule. The court of appeals reasoned as follows:

> Assuming for present purposes that the rule is violated when a prosecutor promises a witness some consideration regarding charges or sentencing in return for testimony, a state rule of professional conduct cannot provide an adequate basis for a federal court to suppress evidence that is otherwise admissible. Federal law, not state law, determines the admissibility of evidence in federal court. "Although there is an important state interest in the regulation of attorneys practicing within its borders, there is a competing federal interest in the enforcement of federal criminal law." United States v. Cantor, 897 F. Supp. 110, 115 (S.D.N.Y.1995). ...
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> When it comes to the admissibility of evidence in federal court, the federal interest in enforcement of federal law, including federal evidentiary rules, is paramount. State rules of professional conduct, or state rules on any subject, cannot trump the Federal Rules of Evidence. Cf. Baylson v. Disciplinary Bd. of Supreme Court of Pa., 975 F.2d 102, 111-12 (3d Cir. 1992) (refusing to apply in federal court a state ethics rule that was inconsistent with the Federal Rules of Criminal Procedure and interfered with federal grand jury practice). Federal Rule of Evidence 402 provides:

> All relevant evidence is admissible, except as otherwise provided by the Constitution of the United States, by Act of Congress, by these rules, or by other rules prescribed by the Supreme Court pursuant to statutory authority.

That is an exclusive list of the sources of authority for exclusion of evidence in federal court. State rules of professional conduct are not included in the list.

* * *

Local rules of federal courts are not listed in Rule 402, either. As a result, otherwise admissible evidence cannot be excluded based upon local rules. For that reason, the Southern District of Florida's adoption of the State of Florida's professional conduct rules does not affect our analysis or the result. Acts of Congress are included in the Rule 402 list, of course, because Congress has the authority to exclude from evidence in federal courts anything it pleases, subject only to the limits placed upon it by the Constitution. The question is whether Congress' recent statutory directive that state laws and rules governing attorney conduct shall apply to federal government attorneys "to the same extent and in the same manner as other attorneys in that State," P.L. No. 105-277, § 801(a), *supra*, is aimed at admission of evidence in federal court. In other words, did Congress intend by that enactment to turn over to state supreme courts in every state-- and state legislatures, too, assuming they can also enact codes of professional conduct for attorneys--the authority to decide that otherwise admissible evidence cannot be used in federal court? We think not.

There is nothing in the language or legislative history of the Act that would support such a radical notion. Making state prescribed professional conduct rules applicable to federal attorneys is one thing. Letting those rules govern the admission of evidence in federal court is another. If Congress wants to give state courts and legislatures veto power over the admission of evidence in federal court, it will have to tell us that in plain language using clear terms.

United States v. Lowery, 166 F.3d 1119, 1124-1125 (11th Cir. 1999).

Clearly, the court of appeals concluded that violations of state ethics rules do not warrant the costs associated with the exclusion of the evidence. Courts have repeatedly recognized that the exclusionary rule imposes costs on the search for truth by eliminating the use of probative evidence. Because of these costs, resort to the exclusionary rule as a remedy must be cautious, else the costs of its use will exceed the deterrent benefit. Certainly, the exclusionary rule exists to remedy Fourth Amendment violations by the police. "The exclusionary rule, as it is known, is 'a judicially created remedy designed to safeguard Fourth Amendment rights generally through its deterrent effect.' United States v. Calandra, 414 U.S. 338, 348, 94 S. Ct. 613, 38 L. Ed. 2d 561 (1974)." United States v. Martin, 297 F.3d 1308, 1312 (11th Cir. 2002). Part of the consideration underlying the use of the exclusionary rule in the Fourth Amendment context is that there are few other effective deterrents to illegal searches. Because there *are* other remedies available to deter ethical violations by federal attorneys, including disciplinary sanctions within the Justice Department and by the bar associations of which they are members, the need for the exclusionary rule as a remedy for ethical violations is far outweighed by the costs the rule inflicts on the truth-finding process. Thus, violations of state rules of professional responsibility (assuming without deciding that one occurred here), do not warrant the exclusion or suppression in federal criminal proceedings of otherwise admissible evidence obtained as a result.[4]

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[4] The court has no occasion to consider the implications of ethical violations by federal attorneys in civil proceedings, and it expresses no opinion about that.

Because suppression of the surreptitious tape recordings is not a remedy available in these circumstances, there is no need for an evidentiary hearing. Whatever might be found about violations of Rule 4.2 would not lead to the suppression of the evidence, so a hearing on the issue appears useless. The motion to hold a hearing, therefore, is due to be and hereby is DENIED.

6. Motion for Bill of Particulars (Doc. 103) — This motion seeks to compel the Government to provide more particular information with respect to 108 items contained in the indictment. Of those 108 requests, about 52 seek identification of co-conspirators or other persons who aided and abetted the alleged illegal scheme. The remaining requests for particulars seek information relating to potential victims, places "elsewhere" in which alleged illegal conduct occurred, the nature of the alleged illegal or fraudulent record entries in HealthSouth's books, and the nature of benefits received by the defendant from the alleged fraudulent scheme. In response to the motion, the Government agrees that defendant is entitled to a bill of particulars to name the co-conspirators and "aiders and abetters" alleged in the indictment, but it opposes all other requests for particulars.

The parties agree about the purpose of bills of particulars under Rule 7. In United States v. Warren, 772 F.2d 827 (11th Cir. 1985), the court reiterated earlier cases, saying:

> The purpose of a bill of particulars is to inform the defendant of the charge against him with sufficient precision to allow him to prepare his defense, to minimize surprise at trial, and to enable him to plead double jeopardy in the

> event of a later prosecution for the same offense. Cole, 755 F.2d at 760; United States v. Mackey, 551 F.2d 967, 970 (5th Cir.1977).

Id. at 837. "Generalized discovery is not the proper function of a bill of particulars." Id. (citing United States v. Colson, 662 F.2d 1389, 1391 (11th Cir.1981)). Also, the Eleventh Circuit has said:

> A bill of particulars, properly viewed, supplements an indictment by providing the defendant with information *necessary* for trial preparation. Generalized discovery, however, is not an appropriate function of a bill of particulars and is not a proper purpose in seeking the bill. United States v. Colson, 662 F.2d 1389, 1391 (11th Cir. 1981).

United States v. Anderson, 799 F.2d 1438, 1441 (11th Cir. 1986) (Emphasis in original). Consistent with this demarcation between bills of particular and mere discovery, one court has explained:

> A defendant's constitutional right to know the offense with which he is charged must be distinguished from the defendant's need to know the evidentiary details establishing the facts of such offense which may be satisfied by a bill of particulars. See, United States v. Freeman, 619 F.2d 1112, 1118 (5th Cir. 1980). In this case also, discovery is available toward this end.

United States v. Mainieri, 691 F. Supp. 1394, 1396 (S.D. Fla. 1988). The essence of a bill of particulars is the need for information to *identify* the factual basis of the offense charged in order to distinguish it from other possible criminal charges for double jeopardy purposes.

To the extent the indictment precisely and completely defines the offense charged, a bill of particulars to otherwise clarify it is unnecessary. Its purpose is to supply essential factual information missing from the indictment. "It is well settled law that 'where an indictment fails to set forth specific facts in support of requisite elements of the charged offense, and the information is essential to the defense, failure to grant a request for a bill of particulars may constitute reversible error.'" United States v. Cole, 755 F.2d 748, 760 (11th Cir. 1985)(quoting United States v. Crippen, 579 F.2d 340, 347 (5th Cir.1978)). A bill of particulars cannot be used merely to obtain greater access to evidence relating to a clearly defined charge. As the court of appeals has admonished:

> A bill of particulars may not be used to compel the government to provide the essential facts regarding the existence and formation of a conspiracy. Nor is the government required to provide defendants with all overt acts that might be proven at trial. United States v. Kilrain, 566 F.2d 979, 985 (5th Cir.1978). Nor is the defendant entitled to a bill of particulars with respect to information which is already available through other sources such as the indictment or discovery and inspection. U.S. v. Colson, 662 F.2d 1389 at 1391 (11th Cir. 1981).

United States v. Rosenthal, 793 F.2d 1214, 1227 (11th Cir. 1986).

The court notes that there is some confusion about the need for information relating to unindicted co-conspirators. Although the old Fifth Circuit has said, in authority still binding in the Eleventh Circuit, that a bill of particulars may be "a proper procedure for discovering the names of unindicted co-conspirators who the government plans to use as witnesses," United States v. Barrentine, 591 F.2d 1069, 1077 (5th Cir.), *cert. denied*, 444 U.S.

990, 100 S. Ct. 521, 62 L. Ed. 2d 419 (1979), a panel of the Eleventh Circuit also has equated information about co-conspirators with nothing more than discovery, not a proper function of a bill of particulars. In the Anderson case, the court of appeals wrote:

> To allow the bill of particulars to serve as a wholesale discovery device would actually frustrate the federal discovery rule. Rule 16(b)(2) of the Federal Rules of Criminal Procedure states that the rule "does not authorize the discovery or inspection of ... statements made ... by government ... witnesses, or by prospective government ... witnesses." A defendant who desires a list of government witnesses – or "unindicted co-conspirators" – could thus by-pass the Rule 16(b) restriction on discovery by asking for and receiving a "bill of particulars" pursuant to Fed. R. Crim. P. 7(f), which simply provides that "[t]he court may direct the filing of a bill of particulars." Because a defendant has no right to obtain a list of witnesses by simply calling his request a "bill of particulars," see United States v. Pena, 542 F.2d 292, 294 (5th Cir. 1976), we decline to apply a mechanical rule whereby a bill of particulars is automatically accorded the status of a supplement to an indictment.

United States v. Anderson, 799 F.2d 1438, 1442 (11th Cir. 1986). Nonetheless, the panel seemed to acknowledge that Barrentine still speaks to the right to obtain a list of unindicted co-conspirators as a "discovery bill," something not quite a bill of particulars but something other than mere Rule 16 discovery. Id. at n. 5. Of course, the distinction may lie in the difference between obtaining the "statements" of prospective Government witnesses, which Rule 16 does not allow, and learning the *identity* of co-conspirators as essential information for understanding the nature and scope of the crime charged in the indictment. To the extent that the *identity* of co-conspirators is essential to understanding the charge, Barrentine still authorizes the use of a bill of particulars to obtain that information.

Applying these standards, the court is convinced that defendant's motion for bill of particulars seeks mere discovery, not facts essential to an element of the charged offense missing from the indictment. A reading of the 108 requests for particulars makes plain that defendant is seeking evidentiary information concerned with the documents and witnesses the Government might use against him. The indictment, on the other hand, clearly and precisely defines the nature, time-frame, and essential elements of each of the offenses charged. It plainly enables the defendant to identify what the Government alleges he did in contravention of federal law, so that he can prepare a defense and not be surprised at the nature of the charges sought to be proved at trial.[5] Except for identification of co-conspirators and "aiders and abetters," which the Government agrees defendant is entitled to, the court finds that the rest of the motion is due to be denied.

Consequently, consistent with the Government's agreement to identify the persons behind references in the indictment to co-conspirators and "aiders and abetters," the Government is DIRECTED to file and serve a bill of particulars responding to defendant's requests 1, 2, 9, 11, 12, 13, 15, 16, 18, 20, 21, 23, 25, 26, 28, 32, 34, 36, 40, 44, 45, 50, 51, 53, 55, 57, 58, 59, 61, 63, 65, 66, 67, 69, 70, 71, 74, 76, 78, 80, 82, 86, 88, 89, 92, 94, 97, and

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[5] As the court noted in Mainieri, there is a difference between being surprised by the charge and being surprised by the evidence supporting a charge. The function of the bill of particulars is to reduce surprise at the *charge,* that is, to enable the defendant to identify what he is alleged to have done in violation of law. It is not to eliminate surprise with respect to evidence offered in support of a charge that is clearly understood by the defendant. Rule 7 does not give a defendant the right to insist that he be made aware of all of the evidence the Government may use against him so that he literally is not "surprised" by anything at trial.

99.[6] This bill of particulars shall be filed and served on defendant within twenty (20) days after this Order. In all other respects, the motion is due to be and hereby is DENIED.

7. Defendant's Motion for Discovery (Doc. 97) — In order to determine whether there are any remaining discovery issues to be resolved, this motion is SET for a discovery status conference **at 2:00 p.m.** on **Wednesday, March 10, 2004,** in Courtroom 2-A, Hugo L. Black U.S. Courthouse, Birmingham, Alabama. Immediately after the 2:00 conference, the attorneys should be prepared to meet with the Honorable Karon O. Bowdre in her chambers.

The Clerk is DIRECTED to forward a copy of the foregoing to all counsel of record.

DONE this the 31st day of March, 2004.

T. MICHAEL PUTNAM
UNITED STATES MAGISTRATE JUDGE

[6] The court has expressly not listed requests 107 and 108 because they seek names *and* addresses, and thus appear to be discovery, not requests for information essential to understanding any criminal charge.